

REMARKS

Claims 1-43 and 48-50 remain in the application. Claims 44-47 have been cancelled. Independent claims 1, 40, and 48 have been amended to more clearly define the claimed invention, requiring:

wherein at least a portion of said flexible tube is thin-walled and made of a flexible material such that the thin-walled portion collapses when subjected to a positive pressure differential from the outside of the tube to the inside of the tube, and is openable when subjected to a positive pressure differential from the inside of the tube to the outside of the tube, said flexible portion of said tube being adapted to transport food through said central lumen in response to musculature movement of said patient.

Support for the amendment is in paragraphs 27, 69, and 70 of the specification. The term “collapsible” has been changed back to “flexible” in claims 1 and 40, since the claims as amended now more clearly define at least portion of the tube as being “collapsible”. Claim 35 has been amended to delete “D”. No new matter is added.

In summary, it is submitted that with the amendment to claims 1, 40, and 48, those claims are patentably distinct over the prior art. In that these claims 1, 40, and 48 are generic, then all claims 2-39 and 49-50 respectively dependent thereon, are also proper claims.

It is submitted that all claims 1-43 and 48-50 are in condition for allowance.

Election/Restriction

In the Action, at page 2, the Examiner withdrew claims 2-3, 7-18, 24, 31-32, and 38, all dependent directly or indirectly from claim 1, as being directed to non-elected invention. For the reasons set forth below, generic claim 1, as amended, is believed to be in condition for allowance. Accordingly, the withdrawn claims, dependent on generic claim 1, and posing narrowing limitations, should now be reinstated and allowed.

Claim Rejections 35 USC §112

In the Action, at pages 2-3, claim 35 is rejected as indefinite. In view of the amendment to claim 35, there now is no proper basis for the rejection. That rejection should be reconsidered and withdrawn.

Claim Rejections 35 USC §102

In the Action, at pages 3-4, claims 1, 4-6, 19-22, 26-30, 34-37, 39-40, and 48-50 were rejected under 35 USC §102 (e) as anticipated by U.S. Patent No. 6,675,809 (Stack '809). Issue is taken with that position.

In support of the rejection at page 3, next-to-last line, the Examiner mischaracterizes the elongated tube of claim 1 (and presumably, although not stated, claims 40 and 48), all independent claims in the application. There, the Examiner characterizes the elongated tube as “flexible.” However, claim 1 clearly defines the elongated tube as “collapsible”; at the interview dated January 7, 2007, this issue was addressed, and the Examiner acknowledged the distinction over another Stack patent, which has a disclosure similar to Stack '809. Following that interview, claims 1 and 40 were amended to replace “flexible” with “collapsible.” Apparently, the term “collapsible” was not considered by the Examiner. At the interview dated October 12, 2007, after discussion of Stack '809, Applicant more clearly distinguished the “collapsible” feature of the elongated tube of claims 1, 40, and 48, in the manner of the amendments to claims 1, 40, and 48 made herein. The term “collapsible” has been changed back to “flexible” in claims 1 and 40, since the claims as amended now more clearly define at least portion of the tube as being “collapsible”. The amendments to those claims more clearly define the distinguishing structure.

At the October 12, 2007 interview, the Examiner cited the “enclosed by-pass tail (not shown)” at Stack, col. 9, lines 19-23, as being a “collapsible” elongated tube. However, in the same paragraph, Stack discloses the “elongated by-pass tube” as similar in structure to the “bowel tube described with respect to FIG. 5.”

Stack '809, at col. 5, lines 12-21, which refers to FIG. 5, describes the “bowel tube” to be a soft wire mesh made of shape memory materials, which are self expanding, as opposed to “collapsible” as is the Applicant’s elongated tube, as now claimed.

Thus, Stack '809 does not provide a proper basis for the §102 rejection of those claims. The §102 rejection should be reconsidered and withdrawn.

Claim Rejections 35 USC §103

In the Action, at pages 4-5, claim 25 was rejected under 35 USC §103(a) as being unpatentable over Stack '809. Issue is taken with that position.

For the reasons set forth above, Stack '809 does not provide a proper basis for the rejection of claim 1, the parent of claim 25. Therefore, there is no proper basis for the §103 rejection of claim 25. That §103 rejection should now be reconsidered and withdrawn.

CONCLUSION

For the above reasons set forth above, there is now no proper basis for rejection of independent claims 1, 40, and 48, and all claims depending therefrom, including the previously withdrawn claims. All claims 1-43 and 48-50 are believed to be in condition for allowance. Passage to issue is requested.

The Commissioner is hereby authorized to charge any fees which may be required regarding this application under 37 C.F.R. §1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,
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